



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 5-130 12 VAV 5-140
<b>Regulation title</b>	Notice and Description of Shellfish Area Condemnations Notices of Establishment and Description of Seasonally Condemned Areas at Marina Facilities
<b>Action title</b>	Deletion of these references to the <i>Code of Virginia</i> concerning shellfish area condemnations.
<b>Date this document prepared</b>	1/24/2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

There is no verbiage in these regulations to confer authority to or confirm any action by the State Health Commissioner. They are only a marker in the VAC referring back to the authority delegated by the *Code of Virginia* to the State Health Commissioner to condemn state shellfish waters. The proposed action is to repeal these regulations to rid the VAC of unnecessary language.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

A Periodic Review was posted on the Regulatory Town Hall on 9/4/2007 by the Department of Health for "Notice and Description of Shellfish Area Condemnation [12 VAC 5-130]".

A Periodic Review was posted on the Regulatory Town Hall on 9/4/2007 by the Department of Health for "Notices of Establishment and Description of Seasonally Condemned Areas at Marina Facilities [12 VAC 140]".

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

Code of Virginia §28.2-800 and §2.2-4002, B.16

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

There is no need for these regulations. There is no verbiage in these regulations to confer authority to or confirm any action by the State Health Commissioner. They are only a marker in the VAC referring back to the authority delegated by the Code of Virginia to the State Health Commissioner to condemn state shellfish waters. The purpose of the proposed action is to repeal these regulations to rid the VAC of unnecessary language.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

Since the existing regulations contain no verbiage other than a reference to the enabling section of the Code of Virginia, there is nothing present to be controversial. The fast track process should be used to eliminate this regulation because no one is likely to pay attention to or care about its removal.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

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These regulations will be deleted in their entirety.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

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The issues associated with the proposed deletion of these regulations are:

- 1) The primary advantage to the public is to remove unnecessary and potentially confusing language within the VAC. There are no disadvantages to the public.
- 2) The primary advantage to the Department of Health and to the Commonwealth is to simplify the VAC by removing unnecessary regulations. There are no disadvantages to the Department of Health or to the Commonwealth by deleting these regulations.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, or to the public. There are no disadvantages to the public or the Commonwealth by deleting these regulations.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no proposed actions that are more restrictive than federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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The proposed deletion of these regulations will have no impact, thus no particular locality will be affected.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The elimination of these regulations does not change the Department of Health’s regulatory methods, so there are no alternatives to consider.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	None
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	None
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	None

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

*Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The only viable alternative is to leave these regulations in place.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

- 1) Deletion of these regulations will neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) Deletion of these regulations will neither encourage nor discourage economic self-sufficiency, self-pride, nor the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents.
- 3) Deletion of these regulations will neither strengthen nor erode the marital commitment.
- 4) Deletion of these regulations will neither increase nor decrease disposable family income.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12 VAC 5-130	None	There are no requirements in the regulation, only the enabling <i>Code of Virginia</i> citation	The proposed change is to delete the regulation because it only contains a reference to the <i>Code of Virginia</i> .
12 VAC 5-140	None	There are no requirements in the regulation, only the enabling <i>Code of Virginia</i> citation	The proposed change is to delete the regulation because it only contains a reference to the <i>Code of Virginia</i> .